



Office of the Attorney General

State of Texas

August 14, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Steven R. Bird
City Attorney
City of Childress
City Hall
Childress, Texas 79201

OR92-477

Dear Mr. Bird:

The city of Childress received a written request for "[a]ny and all documents relating in any way" to the termination and resignation of two police officers employed by the city and a list of police department employees employed since the election of Mr. Bill Hinton as police chief. You ask whether this information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15125.

You ask whether the information relating to the termination or resignation of the two officers may be withheld pursuant to sections 3(a)(1) or 3(a)(3) of the Open Records Act. You have made no claim with respect to the second requested item of information.

Section 3(a)(3) excepts the following from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

This exception protects information relating to pending or reasonably anticipated litigation involving the governmental body. *See Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Once the

governmental body demonstrates that litigation is pending or reasonably anticipated and its attorney determines that the requested information relates to the litigation, this office's review is confined to an examination of the relation of the subject matter of the requested information to the subject matter of the litigation. Open Records Decision No. 551 (1990).

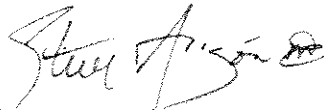
The city has received a letter from an attorney representing one of the officers. It notifies the city that the former officer intends to press a claim for damages against the city. Under these circumstances, we believe that litigation in this matter is reasonably anticipated for purposes of section 3(a)(3). See Open Records Decision No. 555 (1990) (hiring of attorney and attorney's assertion of intent to sue evidences reasonable anticipation of litigation). Furthermore, it clearly appears that the documents offered for our inspection relate to the officer's employment. Accordingly, we agree that the city may withhold this information pursuant to section 3(a)(3).

In your letter you imply that the city may be interested in providing access to some of the requested information, effectively waiving the protection of section 3(a)(3). Some of the information consists of statements provided by juveniles. You ask whether the city is prohibited from releasing the identities of the juveniles or their statements by section 3(a)(1) of the Open Records Act. Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This provision excepts information protected by specific statutes and the right of common-law privacy. In order to protect information under common-law privacy, the information must (1) contain highly intimate or facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) be of no legitimate concern to the public. See *Industrial Found. of the South v. Texas Indust. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

You have cited no statute or case which requires the statements or identities of juveniles to be kept confidential. Furthermore, we do not believe the information is highly intimate or embarrassing. Even if we were to conclude that it was, there is a legitimate and substantial public interest in knowing the details of a public employee's conduct on the job, particularly where the employee is entrusted with the protection and safety of the public. See Open Records Decision Nos. 562 (1990); 455 (1987); 447 (1985). Accordingly, we conclude that the city would not be authorized to withhold the juveniles' statements or their identities under section 3(a)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-477.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Steve Aragón", with a stylized flourish at the end.

Steve Aragón
Assistant Attorney General
Opinion Committee

SA/lmm

Ref.: ID# 15125

cc: Mr. David Green
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